



South Carolina House of Representatives

# Legislative Update

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**Robert J. Sheheen, Speaker of the House**

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### House Week in Review

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With the final month of the 1990 legislative session approaching, a number of notable bills were enrolled for ratification last week.

These included H.4807, revisions to the State Underground Petroleum Environmental Response Bank. This act will decrease the amount of financial responsibility underground gas tank owners must carry. The act also will increase the annual per tank registration fee owners must pay and add a one-half cent per gallon environmental impact fee with the proceeds going to the SUPERB account. This purpose of this legislation is to make it easier for tank owners to meet the new and stricter federal liability requirements for underground gas tanks.

Also enrolled for ratification was H.4427, legislation which would authorize special property tax assessments for rehabilitated historic properties, and H.4483, which will increase the retirement compensation of retired judges and will prohibit any retired judge who practices law from serving on the bench.

A number of Senate bills also were enrolled for ratification. These included S.1268, which overhauls the state Mining Act; S.1202, an act regulating athletic agents' dealings with student athletes; and S.1137, the Adult Health Care Consent Act.

On a voice vote Wednesday, the House voted to continue S.710, legislation which would better regulate Child Care Facilities -- a parliamentary move that assured the demise of the bill this session. However, a few minutes later, also on a voice vote, the House also agreed to adjourn debate on a motion to reconsider the vote whereby the child care bill was continued.

## Bills Introduced

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Here is a sampling of bills introduced in the House during the past week. Not all the bills introduced in the House are featured here. The bills are organized by the standing committees to which they were referred.

### Education and Public Works Committee

Pledge of Allegiance (S.630, Sen. Rose). This legislation would require that beginning with the 1990-91 school year, all public schools students would say the Pledge of Allegiance during the course of the day. Those students who do not wish to say the pledge would be exempt and not penalized for not participating. Those who do not participate may leave the classroom, remain seated or express the non-participation in "any form that does not materially infringe upon the rights of other persons or disrupt school activities."

### Judiciary Committee

Shock Probation (S.1451, Sen. Drummond). This Senate bill is the companion bill to H.4906, introduced by Rep. Kirsh last month. The legislation would rewrite the current section of the code dealing with the shock probation program. The provisions of this bill would apply to any person 25-years-old or younger, who would be eligible for parole in two years or less, who has not been convicted of a violent crime, who has not served a previous jail sentence or been in the shock probation program, and who is physically capable of participating in the program. Shock incarceration would entail a 90 day sentence of "rigorous physical activity, intensive regimentation and discipline, rehabilitation therapy and programming."

The Department of Corrections would draw up regulations for the shock incarceration program, including selection criteria, inmate discipline and program structure. A selection committee would be established at each reception center to review applications for the shock incarceration program; however, the Corrections commissioner would have final approval over who participates in the program. An

inmate would have to apply for the program, under this bill. If he is selected, he would have to sign an agreement stating he would adhere to the conditions of the program or be transferred to a regular prison facility.

When an inmate successfully completes a shock incarceration program, he would be eligible for release unless the Board of Probation, Parole and Pardon Services determines it would be adverse to society to do so.

The final paragraph of this bill reads, "Participation in a shock incarceration program is a privilege. Nothing contained in this article confers upon an inmate the right to participate or continue to participate in a program."

### **Labor, Commerce and Industry Committee**

Income Tax Preparers (H.5056, Rep. Harvin). This legislation would require income tax preparers to include their taxpayer identification numbers, along with their signatures, on South Carolina state income tax returns.

### **Medical, Military, Public and Municipal Affairs Committee**

Dental Health Education (S.966, Sen. Lee). This legislation would set up a dental health screening program for public school children in kindergarten, second and seventh grades. The program implementation would be subject to the funds appropriated to the Department of Education for it by the General Assembly. Under this bill, the department would designate five counties, representing urban and rural areas, to participate in a pilot program.

The pilot program would concentrate on dental education, preventive dental care, screening and treatment referral for those children eligible for federal free and reduce lunches.

The Department would coordinate federal Medicaid assistance and any other efforts, including dentists and local governments, to help reduce the cost to the state for the program.

The effectiveness of the pilot program must be reported to the chairmen of the House Medical, Military, Public and Municipal Affairs Committee and the Senate Medical Affairs Committee.

Drug Free Work place (S.981, Sen. Rose). This legislation parallels H.4624, introduced in February by Rep. Rama. Under this bill, no person, other than an individual, could receive a state grant or be considered for a state procurement contract of \$50,000 or more unless the person has certified to the state agency he will provide a drug-free work place.

The legislation outlines what the person must do to certified his work place is drug free. This includes notifying his employees that as a condition of employment on the grant or contract, they must abide by the stipulations of this legislation and that they must notify the employer within 5 days of any drug conviction occurring in the work place. Additionally, the contractor would have to take appropriate personnel action, including firing the employee, if an employee is convicted of a drug violation. The employer also could require the employee to participate in a drug rehabilitation program.

If the state agency finds the contractor has falsified the certification information or does not take appropriate remedial action against an employee convicted on drug offenses, the agency can terminate the contract. If a contractor is barred from state contracts and grants due to violation of these provisions, this action could last more than one year but no more than five years.

The State Alcohol and Drug Abuse Commission would give technical assistance to any state agency to assist with the implementation of this legislation.

These provisions would apply to grants or contracts made after December 31, 1990.

### **Ways and Means Committee**

Premium Tax for Fire Academy (H.5055, Rep. Harvin). Under this legislation, the one percent premium tax collected from fire insurers would be used to fund the South Carolina Fire Academy.

Competitive Bidding (H.5058, Rep. Altman). This bill would raise the amount under which state contracts must be awarded by sealed bid. Currently, all contracts of \$2,500 or more must be awarded by competitive sealed bid. This bill would raise that amount to \$5,000. A contract below \$5,000 must meet certain specifications under this legislation. These include:

- For a contract under \$500, the price must be fair and reasonable;
- For a contract between \$500 and \$2,499.99, verbal or written quotes must be solicited from a minimum of three vendors. Documentation of the solicitation quote must accompany the purchase requisition;

- For a contract between \$2,500 and \$4,999.99, written quotes from a minimum of four vendors must be solicited with documentation attached to the requisition.

The legislation would also require school districts to adopt these procurement changes:

- For a contract under \$500, it must be fair and reasonable;.
- For a contract between \$500 and \$1,499.99, verbal or written quotes from a minimum of three vendors must be solicited and documentation provided;
- For purchases between \$1,500 and \$2,499.99, written quotes from a minimum of four vendors must be solicited and documentation provided.

Advisory Commission to Eliminate Wasteful Government Spending (S.1405, Sen. McConnell). This joint resolution, companion bill to H.4853 introduced in March by Rep. Corbett, would create an 18-member Advisory Commission on Elimination of Wasteful State Government Spending. This commission would make a study of ways to eliminate wasteful spending, including duplication of services and feasibility of consolidating state agencies. This report would be due one year after the effective date of the act. Staff for the commission would be provided by the State Reorganization Commission. The commission would expire with the filing of the report to the General Assembly.

Members of the commission would consist of one member from each congressional district, six members at-large representing the private sector, and six members representing the taxpayers' interests. Appointment would be by the governor with the advice and consent of each house of the General Assembly. The bill stipulates that no elected official or member of a state board, commission or committee may serve on the commission.

Fire Marshal Board of Appeals (S.1487, Sen. Lee). This legislation would authorize the creation of the State Fire Marshal Board of Appeals. This seven member board would hear appeals from municipalities, counties, state agencies or a resident directly affected by a decision by the State Fire Marshal. The appeals board could modify or reverse any decision made by the fire marshal in a case when, in the opinion of the appeals board, the decision is unjust and contrary to the purpose of the fire regulations or the public interest. The decision of the appeals board would be final. However, emergency decisions by the fire marshal could not be stayed pending appeal to the appeals board.

This legislation is similar to H. 4923, introduced in April by Rep. Felder.

### Crime-related Legislation

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Crime, particularly as it relates to illegal drugs and juveniles, has been of particular interest during the 1990 session. The House of Representatives has acted on a number of bills aimed at drug trafficking as well as legislation to make schools drugs and weapons free.

The following is a brief list of crime-related legislation passed by the House this session and the status of each bill.

Safe Schools Act of 1990 (H.4852, Rep. Wilkins). The bill would address a number of crime problems now facing South Carolina schools. The bill addresses increasing penalties for carrying weapons and trafficking drugs on school property, the criminal records of juveniles, and the circumstances under which they can be tried as adults.

Under this bill, the penalty for carrying a weapon on school property would increase from a \$100 to a \$1,000 fine. The jail time also would increase from 30 days to one year. In addition, anyone manufacturing or selling drugs within a half mile of a school would face both a fine and jail time, instead of either a fine or jail time. The bill also makes it a separate criminal offense to purchase drugs within a half mile radius of a school, punishable by a \$1,000 fine and/or one year in jail.

Further, the bill would allow a juvenile, 15 or older, to be tried as an adult for bringing a weapon on school property or for distributing drugs within a half-mile proximity of a school following a full investigation and court hearing.

Under this legislation, the Department of Youth Services would have to provide a public or private school with the criminal record of the juvenile, who has been convicted of a violent crime. Upon the juvenile's release from the department, DYS would provide his criminal record to the principal of the school the juvenile is eligible to attend. Each school district would develop a confidentiality policy regarding the handling of the juvenile's record. The policy would determine who would have access to the information and where the record would be kept. At the minimum, the policy would require the record be kept in the juvenile's confidential disciplinary files and to be destroyed when the youth graduates or reaches 21-years-old.

The legislation also would require the State Department of Education to develop, in conjunction with SLED, a standard school crime reporting form. All incidents reported on the forms would be compiled by the Education Department and published annually as a report to the General Assembly.

STATUS: Ordered to a third reading in the Senate with notice of general amendments.

Juveniles and Drug Operations (H.4574, Rep. Hayes). This legislation would make it illegal to use a person under 18-years-old in an illegal drug operation, nor would it be legal to receive a controlled substance from a juvenile. Violation of these provisions would constitute a felony carrying a sentence of 5 to 15 years.

According to the Attorney General's Office, one way many drug dealers exploit children is by using juveniles to distribute drugs. Such use of children virtually ensures that the child will become a part of the drug dealing criminal element.

STATUS: Pending before the Senate Judiciary Committee.

Laundering Drug Money (H.4571, Rep. Hayes). This legislation would make it a felony to knowingly participate in a financial transaction designed to disguise or conceal the proceeds gained through violation of state or federal illegal drug laws. It also would make it a felony if the transaction was used to promote further illegal drug activities. The penalty for violation would be a fine of not more than \$500,000 or twice the value of the property involved in the transaction, whichever is greater, or not more than 20 years in jail.

Further, the legislation makes it a felony to transport, transmit, or transfer a monetary instrument or funds from a place in South Carolina to a place outside the U.S., or to a place in South Carolina from a place out of the country, if the action is taken to promote illegal drug activities or to disguise or conceal the proceeds of illegal drug activities.

This also would be punishable by a fine of \$500,000 or twice the value of the monetary instrument or funds involved in the transportation, whichever is greater, or both.

In addition, anyone involved in illegal drug activities or who conceals or disguises property gained through illegal activities, or attempts to conduct a financial transaction involving property gained through illegal activities or used in illegal activities, would be guilty of a felony. The punishment would be a \$500,000 fine or twice the value of the property involved, whichever is greater, or a 20 year jail term.



Anyone convicted of the violations described in this legislation would also be liable to the state for a civil penalty. This civil penalty would be either the value of the property, funds, or monetary instruments used in the transaction, or \$10,000, whichever is greater.

This legislation was among those recommended by the Attorney General. According to the office, such a statute, if enacted, would all the prosecution of white collar criminal who launder money for drug traffickers but who do not get involved in actual drug distribution.

STATUS: Pending before the Senate Judiciary Committee.

Additional Penalties for Drug Offenses and Machine Gun Use (H.4573, Rep. Hayes). This legislation would provide additional punishment for a drug related offense if the convicted was in possession of a firearm or visibly displays a firearm or knife in the commission of the crime. The additional punishment, like that for violent crimes, would be five years on top of the sentence for the original offense.

The legislation also provides that if the firearm used in the commission of a violent or drug-related crime is a machine gun or a firearm with a silencer, the additional penalty would be ten years. These additional penalties must run consecutively, not concurrently, if the conviction is drug-related. The convicted would not be eligible for parole, work release or extended work release during the service of the sentence.

STATUS: Pending before the Senate Judiciary Committee.

Facilitating Drug Activities (H.4436, Rep. Baker). Under this legislation, confiscation provisions would be expanded to include any motor vehicle used "to facilitate any transaction to purchase or sell" controlled substances or their compounds. The bill would delete that portion of the current law which states that no motor vehicle can be forfeited to the state unless it is found to conceal, contain or transport certain amounts of illegal substances.

STATUS: Pending before the Senate Judiciary Committee.

Intimidation of Witnesses or Victims (H.4575, Rep. Hayes). This legislation would make intimidation of witnesses a crime. It would be a misdemeanor punishable by a \$5,000 fine and/or jail time of not more than five years to prevent or attempt to prevent or dissuade a victim or witness from reporting to law enforcement, from causing an indictment or warrant to be issued, or from causing the arrest of any person.

It would be a felony if a victim or witness is intimidated by a threat of violence on the victim or a third person; where the intimidation is part of a conspiracy; or where the act is committed for money, or by someone convicted of any state or federal crime. This felony is punishable by five years in jail and/or \$10,000. Further, the person convicted of the felony is not eligible for parole, work release or extended work release.

STATUS: Pending before the Senate Judiciary Committee.

Forfeiture Proceeds (H.4360, Rep. Hayes). This legislation would revise the forfeiture statutes currently on the books to allow the local or state law enforcement agency, initiating the property seizure in connection with illegal drug activities, to retain the proceeds of the sale instead of being it remitted to the state treasurer.

It also allows the local or state law enforcement agency which initiated the seizure to retain 90 percent of the sale of negotiated instruments or securities seized in connection with illegal drug activities. These forfeited proceeds must be used to further the fight against illegal drugs and could not be used for recurring operating expenses of the agency. The proceeds of the sale would be placed in a special account by the state treasurer and then remitted back to the law enforcement agency. The remaining ten percent of the proceeds of any of these transactions must be remitted to the general fund of the state.

STATUS: Pending before the Senate Judiciary Committee.